

COMMONWEALTH of VIRGINIA

M. NORMAN OLIVER, MD, MA
STATE HEALTH COMMISSIONER

Department of Health
PO BOX 2448
RICHMOND, VA 23218

TTY 7-1-1 OR
1-800-828-1120

December 6, 2019

Matthew M. Cobb, Esquire
Williams Mullen
Post Office Box 1320
Richmond, Virginia 23218

**RE: CERTIFICATE OF PUBLIC NEED
(COPN or "Certificate")
NUMBER VA-04692
(REQUEST NUMBER VA-8432
Richfield Living
Salem, Planning District (PD) 5
Build a 116-Bed Nursing Facility
Through Relocation of Beds**

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Dear Mr. Cobb:

In accordance with Article 1.1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia (the "COPN Law") I have reviewed the application captioned above and the record compiled in relation to the project proposed in that application. As required by Subsection B of Virginia Code § 32.1-102.3, I have considered all matters, listed therein, that must be taken into account in making a determination of public need.

I have received, reviewed and adopted the enclosed findings, conclusions and recommended decision of the adjudication officer who convened the informal fact-finding conference to discuss the application, and who reviewed the administrative record pertaining to the proposed project.

Based on my review of the project and on the recommended decision of the adjudication officer, **I am approving the project** proposed by Richfield Living. The project merits approval and should result in issuance of a Certificate. It is necessary to meet a public need.

VDH VIRGINIA
DEPARTMENT
OF HEALTH
*To protect the health and promote the
well-being of all people in Virginia.*

The reasons for my decision include the following:

- i) The proposed project is generally consistent with the applicable criteria and standards of the State Medical Facilities Plan (SMFP) and the eight required considerations of the Code of Virginia;
- ii) The capital costs of the proposed project are reasonable;
- iii) The proposed project appears economically viable in the long-term;
- iv) The proposed project is not likely to have a significant negative impact on the utilization or staffing of other PD 5 providers of skilled nursing care;
- v) The status quo is not a reasonable alternative to the proposed project; and
- vi) The proposed project is one inventory-neutral phase of a multi-phased plan that will ultimately result in an overall reduction of the PD 5 surplus of nursing home beds.

While this letter announces an approval of an application, in an abundance of caution, I state for general awareness that, in accordance with Rule 2A:2 of the Rules of the Supreme Court of Virginia, any aggrieved party to an administrative proceeding choosing to appeal a case decision* shall file, within 30 days after service of the case decision, a signed notice of appeal with "the agency secretary." I would consider such a notice sufficiently filed if it were addressed and sent to the Office of the State Health Commissioner, and timely received by that office, at the James Madison Building, Thirteenth Floor, 109 Governor Street, Richmond, Virginia 23219. Under the Rule, when service of a decision is "accomplished by mail," three days are added to the 30-day period.

Sincerely,



M. Norman Oliver, MD, MA
State Health Commissioner

cc (via email):
Stephanie Harper, MD
Director, Alleghany Health District
Amanda Lavin, Esq.
Assistant Attorney General
Deborah Waite
Virginia Health Information

* In accordance with Va. Code § 2.2-4023, the signed original of these final agency case decisions "shall remain in the custody" of the Department, while the applicants are receiving a photocopy of the original case decision letter.

Matt Cobb, Esq.
December 2019
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c (cont'd):

Erik O. Bodin, III
Director, Division of
Certificate of Public Need
Douglas R. Harris, JD
Adjudication Officer

COPY

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
MEDICAL CARE FACILITIES CERTIFICATE OF PUBLIC NEED**

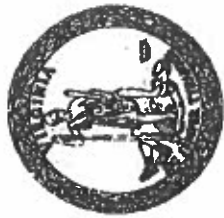
THIS CERTIFIES THAT Richfield Living is authorized to initiate the proposal as described herein.

NAME OF FACILITY: Richfield Living

LOCATION: 3615 West Main Street, Salem, Virginia 24153

OWNERSHIP AND CONTROL: Richfield Living

SCOPE OF PROJECT: Construction of a 116-bed nursing facility through relocation of beds, in accordance with specifications and representations made during the course of review. The total authorized capital and financing cost of the project is \$33,371,138. The project is scheduled to be completed by January 1, 2021.



Pursuant to Chapter 4, Article 1:1 of Title 32.1, Sections 32.1-102.1 through 32.1-102.11, Code of Virginia (1950), as amended and the policies and procedures promulgated thereunder, this Medical Care Facilities Certificate of Public Need is issued contingent upon substantial and continuing progress towards implementation of the proposal within twelve (12) months from the date of issuance. A progress report shall be submitted to the State Health Commissioner within twelve (12) months from the date of issuance along with adequate assurance of completion within a reasonable time period. The Commissioner reserves the right not to renew this Certificate in the event the applicant fails to fulfill these conditions. This Certificate is non-transferable and is limited to the location, ownership, control and scope of the project shown herein.

Certificate Number: VA-04692
Date of Issuance: December 15, 2019
Expiration Date: December 14, 2020


M. Norman Oliver, MD, MA
State Health Commissioner

**RECOMMENDATION
TO THE STATE HEALTH COMMISSIONER
FOLLOWING AN INFORMAL FACT FINDING
CONFERENCE REGARDING CERTIFICATE
OF PUBLIC NEED (COPN or “certificate”)
REQUEST NUMBER VA-8432
RICHFIELD LIVING
Roanoke, Planning District (PD) 5
Build a 116-Bed Nursing Facility**

I. Introduction

This document is a recommended case decision. It is submitted to the State Health Commissioner (hereinafter, the “Commissioner”) for his adoption. It follows an informal fact-finding conference (IFFC) conducted in accordance with the Virginia Administrative Process Act (APA),¹ and has been written after a review of the Virginia Department of Health’s (Department) administrative record of the above-referenced application for a COPN. This recommended decision follows a review of the project against the statutory considerations that the Commissioner must consider in determining whether to find public need and grant a COPN.²

II. Authority

Article 1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 et seq.) of the Virginia Code (the “COPN law”) addresses medical care facilities and provides that “[n]o person shall commence any project without first obtaining a [certificate] issued by the Commissioner.”³ The COPN law defines “project” to include the above-captioned proposal.⁴

III. Procedural Background; Submittal of Documents for the Record

1. After routine review, on May 20, 2019, this Department’s Division of Certificate of Public Need (DCOPN) issued its staff report on this application (the “DCOPN staff report”). In that report, the division recommends the approval of the project proposed by Richfield Living.
2. After release of the DCOPN staff report, Botetourt Health Care, LLC, doing business as Carrington Place at Botetourt (“Botetourt Health”), filed a timely petition seeking to show why it should be made a party to the proceedings for good cause (a “good cause petition”). This act by The Botetourt Health triggered the need for adjudication, including the convening of both an IFFC on the good cause petition, and an IFFC on the application filed by Richfield Living.

¹ Va. Code § 2.2-4000 *et seq.*, specifically, Va. Code § 2.2-4019; *see also* Va. Code § 32.1-102.6.

² Va. Code § 32.1-102.3 (B).

³ Va. Code § 32.1-102.3 (A).

⁴ Va. Code § 32.1-102.1.

3. The IFFCs were held on August 13, 2019, in Henrico County. Principle agents of the applicant and the good cause petitioner appeared and were represented by legal counsel. A health facilities planning analyst from the Department's Division of Certificate of Public Need (DCOPN, or "division")⁵ attended the IFFC and presented that division's staff report on the project.
4. At the close of the IFFCs, a briefing schedule was devised for post-IFFC submittals. This gave an opportunity for the applicant and petitioner to augment the adjudicatory record with written materials. The close of the adjudicatory record occurred on September 17, 2019.
5. On November 18, 2019, the Commissioner issued a case decision denying the good cause petition submitted by Botetourt Health.

IV. Analysis, Findings of Fact and Conclusions of Law

I hereby attach and incorporate the DCOPN staff report into the present document for the purpose of providing, establishing or corroborating basic and un rebutted facts and providing analysis that supports and helps substantiate the recommendation made herein.

Based on the administrative record, I make and offer the following analysis, findings of fact and conclusions of law:

1. Richfield Living has proposed carrying out an intra-PD nursing home bed transfer to build the 116-bed facility. The project carries the benefits discussed in the DCOPN staff report. The reasons for DCOPN's recommendation of approval include: a) The proposed project is generally consistent with the applicable criteria and standards of the State Medical Facilities Plan (SMFP) and the eight required considerations of the Code of Virginia; b) The capital costs of the proposed project are reasonable; c) The proposed project appears economically viable in the long-term; d) The proposed project is not likely to have a significant negative impact on the utilization or staffing of other PD 5 providers of skilled nursing care; e) The status quo is not a reasonable alternative to the proposed project; f) The proposed project is one inventory-neutral phase of a multi-phased plan that will ultimately result in an overall reduction of the PD 5 surplus of nursing home beds.
2. But for the good cause petition, DCOPN would have made its recommendation of approval directly to the Commissioner and adjudication of this project would not have been necessary. The denial of the good cause petition renders additional detailed process uneconomical and unnecessary.
3. After reviewing the application, the attendant documentation and submissions and the DCOPN staff report, I am able to confirm DCOPN's recommendation that the project proposed by Richfield Living should be approved in order to meet public need.

⁵ DCOPN is the work unit, or division, within the Department that comprises the Commonwealth's professional health facilities planning staff.

4. Based on the findings of fact made above, I conclude that approval of the proposed project would be reasonable and appropriate under the COPN law, as it would, among other things, address a public need through an enhancement of existing services and bring an improvement in their accessibility.

V. Recommendation

Based on my assessment, I conclude that the project proposed by Richfield Living merits approval. Richfield Living should receive a certificate authorizing the project. The project is necessary to meet a public need.

Respectfully submitted,



Douglas R. Harris, JD
Adjudication Officer

November 28, 2019

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